

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD L. GATHERCOLE,

Defendant.

4:17CR3096

MEMORANDUM AND ORDER

When one weeds through the prolix and frivolous filings in this court and the Court of Appeals, Gathercole, sometimes known infamously and nationally as the “AK 47 bandit,” mainly asserts (filing 106; filing 107) that his counsel was ineffective and a “global” settlement that called for dismissal of a California case was not complied with by the government. Nonsense.

First, any fair reading of the record shows that his counsel was effective and did a terrific job for him (e.g., filing 78) particularly understanding that the case was indefensible. (E.g., filing 103.) Second, the government has represented that the California case has been dismissed and has submitted evidence to prove it. (Filing 125.) Any other claims are of the make-weight variety and are barred by the collateral attack waiver in the plea agreement.

Finally, a defendant cannot appeal an adverse ruling on a § 2255 motion unless he or she is granted a certificate of appealability. 28 U.S.C. § 2253(c)(1); 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in *Slack v. McDaniel*, 529 U.S. 473, 484-485 (2000). I have applied the appropriate standard and determined that the defendant is not entitled to a certificate of appealability.

IT IS ORDERED that the motion for § 2255 relief (filing 106) and any supplements (e.g., filing 107) are dismissed with prejudice. A separate judgment will be issued. No certificate of appealability has been or will be issued.

Dated this 30th day of November, 2020.

BY THE COURT:

Richard G. Kopf
Richard G. Kopf
Senior United States District Judge